

UNITED STATES DISTRICT COURT
DISTRICT OF MASSACHUSETTS

ANTHONY VAUGHN)	
)	
v.)	03-CV-12492-MEL
)	
)	
UNITED STATES OF AMERICA)	<u>O R D E R</u>

LASKER, D.J.

Anthony Vaughn has moved under 28 U.S.C. § 2255 to vacate the sentence imposed on him on August 27, 2002. Vaughn pleaded guilty to the charges in question but bases his motion to set aside the sentence on grounds of ineffective assistance of counsel and, in particular, sentencing counsel's failure to move, at sentencing, for a downward departure, which would presumably have resulted in a lower sentence than the one actually imposed.

Vaughn's motion is denied for the following reasons:

The principal argument which Vaughn contends his counsel should have made in requesting a downward departure is that several of his prior convictions should not have been counted in determining his guideline score because they did not, in fact, constitute convictions but rather "continuances without a finding." This argument lacks merit because the status of those convictions was discussed at length in argument by counsel


as to their legal significance and also in connection with his argument that putting Vaughn into Category III overstated the seriousness of Vaughn's criminal history, even if the prior criminal proceedings were found not to have constituted convictions.

The record of the sentencing proceedings establishes that counsel argued these points at great length and was complimented by the Court for the vigor of his presentation and encouraged to raise the points on appeal. Whether the issues were raised on appeal or not, the conviction and sentence imposed on Vaughn were affirmed by the Court of Appeals.

For the reasons stated above, the motion to vacate the sentence is DENIED.

It is so ordered.

Dated: August 26, 2004
Boston, Massachusetts



/s/ Morris E. Lasker
U.S.D.J.